

1-1 By: Nelson S.B. No. 408
1-2 (In the Senate - Filed February 14, 2005; February 15, 2005,
1-3 read first time and referred to Committee on Government
1-4 Organization; April 25, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 April 25, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 408 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the Public Utility
1-11 Commission of Texas, including regulation of certain utilities with
1-12 delayed customer choice; providing a penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 12.005, Utilities Code, is amended to
1-15 read as follows:

1-16 Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility
1-17 Commission of Texas is subject to Chapter 325, Government Code
1-18 (Texas Sunset Act). Unless continued in existence as provided by
1-19 that chapter or by Chapter 39, the commission is abolished and this
1-20 title expires September 1, 2011 [2005].

1-21 SECTION 2. Section 12.059, Utilities Code, is amended by
1-22 adding Subsection (c) to read as follows:

1-23 (c) A person who is appointed to the commission is entitled
1-24 to reimbursement, as provided by the General Appropriations Act,
1-25 for the travel expenses incurred in attending the training program
1-26 regardless of whether the attendance at the program occurs before
1-27 or after the person qualifies for office.

1-28 SECTION 3. Section 12.102, Utilities Code, is amended to
1-29 read as follows:

1-30 Sec. 12.102. DUTIES OF EMPLOYEES. The commission shall
1-31 develop and implement policies that clearly separate [define] the
1-32 policymaking [respective] responsibilities of the commission and
1-33 the management responsibilities of the commission employees.

1-34 SECTION 4. Section 12.153, Utilities Code, is amended to
1-35 read as follows:

1-36 Sec. 12.153. RELATIONSHIP WITH TRADE ASSOCIATION. A person
1-37 may not serve as a commissioner or be a commission employee who is
1-38 employed in a "bona fide executive, administrative, or professional
1-39 capacity," as that phrase is used for purposes of establishing an
1-40 exemption to the overtime provisions of the federal Fair Labor
1-41 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), [exempt from
1-42 the state's position classification plan or is compensated at or
1-43 above the amount prescribed by the General Appropriations Act for
1-44 step 1, salary group 17, of the position classification salary
1-45 schedule] if the person is:

1-46 (1) an officer, employee, or paid consultant of a
1-47 trade association; or

1-48 (2) the spouse of an officer, manager, or paid
1-49 consultant of a trade association.

1-50 SECTION 5. Subchapter A, Chapter 14, Utilities Code, is
1-51 amended by adding Section 14.0025 to read as follows:

1-52 Sec. 14.0025. NEGOTIATED RULEMAKING AND ALTERNATIVE
1-53 DISPUTE RESOLUTION. (a) The commission shall develop and
1-54 implement a policy to encourage the use of:

1-55 (1) negotiated rulemaking procedures under Chapter
1-56 2008, Government Code, for the adoption of commission rules; and

1-57 (2) appropriate alternative dispute resolution
1-58 procedures under Chapter 2009, Government Code, to assist in the
1-59 resolution of internal and external disputes under the commission's
1-60 jurisdiction.

1-61 (b) The commission's procedures relating to alternative
1-62 dispute resolution must conform, to the extent possible, to any
1-63 model guidelines issued by the State Office of Administrative

2-1 Hearings for the use of alternative dispute resolution by state
2-2 agencies.

- 2-3 (c) The commission shall designate a trained person to:
- 2-4 (1) coordinate the implementation of the policy
- 2-5 adopted under Subsection (a);
- 2-6 (2) serve as a resource for any training needed to
- 2-7 implement the procedures for negotiated rulemaking or alternative
- 2-8 dispute resolution; and
- 2-9 (3) collect data concerning the effectiveness of those
- 2-10 procedures, as implemented by the commission.

2-11 SECTION 6. Subchapter B, Chapter 14, Utilities Code, is
2-12 amended by adding Section 14.059 to read as follows:

2-13 Sec. 14.059. TECHNOLOGY POLICY. The commission shall
2-14 implement a policy requiring the commission to use appropriate
2-15 technological solutions to improve the commission's ability to
2-16 perform its functions. The policy must ensure that the public is
2-17 able to interact with the commission on the Internet.

2-18 SECTION 7. Section 15.023, Utilities Code, is amended by
2-19 amending Subsections (b) and (c) and adding Subsection (d) to read
2-20 as follows:

2-21 (b) The penalty for a violation may be in an amount not to
2-22 exceed \$25,000 [~~\$5,000~~]. Each day a violation continues or occurs
2-23 is a separate violation for purposes of imposing a penalty.

2-24 (c) The commission by rule shall establish a classification
2-25 system for violations that includes a range [~~The amount~~] of [~~an~~]
2-26 administrative penalties that may be assessed for each class of
2-27 violation [~~penalty shall be~~] based on:

- 2-28 (1) the seriousness of the violation, including:
 - 2-29 (A) the nature, circumstances, extent, and
 - 2-30 gravity of a prohibited act; and
 - 2-31 (B) the hazard or potential hazard created to the
 - 2-32 health, safety, or economic welfare of the public;
- 2-33 (2) the economic harm to property or the environment
- 2-34 caused by the violation;
- 2-35 (3) the history of previous violations;
- 2-36 (4) the amount necessary to deter future violations;
- 2-37 (5) efforts to correct the violation; and
- 2-38 (6) any other matter that justice may require.

2-39 (d) The classification system established under Subsection
2-40 (c) shall provide that a penalty in an amount that exceeds \$5,000
2-41 may be assessed only if the violation is included in the highest
2-42 class of violations in the classification system.

2-43 SECTION 8. Subsection (b), Section 15.051, Utilities Code,
2-44 is amended to read as follows:

2-45 (b) The commission shall keep for a reasonable period
2-46 information about each complaint filed with the commission that the
2-47 commission has authority to resolve. The information shall
2-48 include:

- 2-49 (1) the date the complaint is received;
- 2-50 (2) the name of the complainant;
- 2-51 (3) the subject matter of the complaint;
- 2-52 (4) a record of each person contacted in relation to
- 2-53 the complaint;
- 2-54 (5) a summary of the results of the review or
- 2-55 investigation of the complaint; and
- 2-56 (6) if the commission took no action on the complaint,
- 2-57 an explanation of the reason the complaint was closed without
- 2-58 action.

2-59 SECTION 9. Section 39.151, Utilities Code, is amended by
2-60 amending Subsections (b) through (e), (g), and (h) and adding
2-61 Subsections (d-1) and (g-1) to read as follows:

2-62 (b) "Independent organization" means an independent system
2-63 operator or other person that is sufficiently independent of any
2-64 producer or seller of electricity that its decisions will not be
2-65 unduly influenced by any producer or seller. [~~An entity will be~~
2-66 ~~deemed to be independent if it is governed by a board that has three~~
2-67 ~~representatives from each segment of the electric market, with the~~
2-68 ~~consumer segment being represented by one residential customer, one~~
2-69 ~~commercial customer, and one industrial retail customer.]~~

3-1 (c) The commission shall certify an independent
 3-2 organization or organizations to perform the functions prescribed
 3-3 by this section. The commission shall apply the provisions of this
 3-4 section and Sections 39.1511, 39.1512, and 39.1515 so as to avoid
 3-5 conflict with a ruling of a federal regulatory body.

3-6 (d) The commission shall adopt and enforce rules [An
 3-7 independent organization certified by the commission for a power
 3-8 region shall establish and enforce procedures, consistent with this
 3-9 title and the commission's rules,] relating to the reliability of
 3-10 the regional electrical network and accounting for the production
 3-11 and delivery of electricity among generators and all other market
 3-12 participants, or may delegate to an independent organization
 3-13 responsibilities for establishing or enforcing such rules. Any
 3-14 such rules adopted by an independent organization and any
 3-15 enforcement actions taken by the organization are~~[- The procedures~~
 3-16 ~~shall be]~~ subject to commission oversight and review. An
 3-17 independent organization certified by the commission is directly
 3-18 responsible and accountable to the commission. The commission has
 3-19 complete authority to oversee and investigate the organization's
 3-20 finances, budget, and operations as necessary to ensure the
 3-21 organization's accountability and to ensure that the organization
 3-22 adequately performs the organization's functions and duties. The
 3-23 organization shall fully cooperate with the commission in the
 3-24 commission's oversight and investigatory functions. The
 3-25 commission may take appropriate action against an organization that
 3-26 does not adequately perform the organization's functions or duties
 3-27 or does not comply with this section, including decertifying the
 3-28 organization or assessing an administrative penalty against the
 3-29 organization. The commission by rule shall adopt procedures
 3-30 governing decertification of an independent organization,
 3-31 selecting and certifying a successor organization, and
 3-32 transferring assets to the successor organization to ensure
 3-33 continuity of operations in the region. The commission may not
 3-34 implement, by order or by rule, a requirement that is contrary to an
 3-35 applicable federal law or rule.

3-36 (d-1) The commission may:

3-37 (1) require an independent organization to provide
 3-38 reports and information relating to the independent organization's
 3-39 performance of the functions prescribed by this section and
 3-40 relating to the organization's revenues, expenses, and other
 3-41 financial matters;

3-42 (2) prescribe a system of accounts for an independent
 3-43 organization;

3-44 (3) conduct audits of an independent organization's
 3-45 performance of the functions prescribed by this section or relating
 3-46 to its revenues, expenses, and other financial matters and may
 3-47 require an independent organization to conduct such an audit;

3-48 (4) inspect an independent organization's facilities,
 3-49 records, and accounts during reasonable hours and after reasonable
 3-50 notice to the independent organization;

3-51 (5) assess administrative penalties against an
 3-52 independent organization that violates this title or a rule or
 3-53 order adopted by the commission and, at the request of the
 3-54 commission, the attorney general may apply for a court order to
 3-55 require an independent organization to comply with commission rules
 3-56 and orders in the manner provided by Chapter 15; and

3-57 (6) resolve disputes between an affected person and an
 3-58 independent organization and adopt procedures for the efficient
 3-59 resolution of such disputes.

3-60 (e) The commission may authorize an independent
 3-61 organization that is certified under this section to charge a
 3-62 reasonable and competitively neutral rate to wholesale buyers and
 3-63 sellers to cover the independent organization's costs. The
 3-64 commission shall investigate the organization's cost efficiencies,
 3-65 salaries and benefits, and use of debt financing and may require the
 3-66 organization to provide any information needed to effectively
 3-67 evaluate the organization's budget and the reasonableness and
 3-68 neutrality of a rate or proposed rate or to evaluate the
 3-69 effectiveness or efficiency of the organization. The commission

4-1 shall work with the organization to establish the detail of
 4-2 information, both current and historical, and the time frames the
 4-3 commission needs to effectively evaluate a rate or a rate request.

4-4 (g) To maintain certification as an independent
 4-5 organization under this section, an organization's ~~[If it amends~~
 4-6 ~~its governance rules to provide that its governing body is composed~~
 4-7 ~~as prescribed by this subsection, the existing independent system~~
 4-8 ~~operator in ERCOT will meet the criteria provided by Subsection (a)~~
 4-9 ~~with respect to ensuring access to the transmission systems for all~~
 4-10 ~~buyers and sellers of electricity in the ERCOT region and ensuring~~
 4-11 ~~the reliability of the regional electrical network. To comply with~~
 4-12 ~~this subsection, the] governing body must be composed of persons~~
 4-13 ~~specified by this section and selected in accordance with formal~~
 4-14 ~~bylaws or protocols of the organization. The bylaws or protocols~~
 4-15 ~~must be approved by the commission and must reflect the input of the~~
 4-16 ~~commission. The bylaws must specify the process by which~~
 4-17 ~~appropriate stakeholders elect members and, for unaffiliated~~
 4-18 ~~members, prescribe professional qualifications for selection as a~~
 4-19 ~~member. The bylaws must require the use of a professional search~~
 4-20 ~~firm to identify candidates for membership of unaffiliated members.~~
 4-21 ~~The process must allow for commission input in identifying~~
 4-22 ~~candidates. The governing body must be composed of:~~

4-23 (1) the chairman of the commission as an ex officio
 4-24 nonvoting member;

4-25 (2) the counsellor as an ex officio voting member
 4-26 representing residential and small commercial consumer interests;

4-27 (3) the chief executive officer ~~[director]~~ of the
 4-28 independent organization ~~[system operator]~~ as an ex officio voting
 4-29 member;

4-30 (4) six market participants elected by their
 4-31 respective market segments to serve one-year terms, with:

4-32 (A) one representing independent generators;
 4-33 (B) one representing investor-owned utilities;
 4-34 (C) one representing power marketers;
 4-35 (D) one representing retail electric providers;
 4-36 (E) one representing municipally owned
 4-37 utilities; and

4-38 (F) one representing electric cooperatives ~~[four~~
 4-39 ~~representatives of the power generation sector as voting members];~~

4-40 (5) one member representing industrial consumer
 4-41 interests and elected by the industrial consumer market segment to
 4-42 serve a one-year term ~~[four representatives of the transmission and~~
 4-43 ~~distribution sector as voting members];~~

4-44 (6) one member representing large commercial consumer
 4-45 interests selected in accordance with the bylaws to serve a
 4-46 one-year term ~~[four representatives of the power sales sector as~~
 4-47 ~~voting members]; and~~

4-48 (7) five members unaffiliated with any market segment
 4-49 and selected by the other members of the governing body to serve
 4-50 three-year terms ~~[the following people as voting members, appointed~~
 4-51 ~~by the commission:~~

4-52 [(A) one representative of residential
 4-53 customers;

4-54 [(B) one representative of commercial customers;
 4-55 and

4-56 [(C) one representative of industrial
 4-57 customers].

4-58 ~~[The four representatives specified in each of Subdivisions~~
 4-59 ~~(4), (5), and (6) shall be selected in a manner that ensures~~
 4-60 ~~equitable representation for the various sectors of industry~~
 4-61 ~~participants.]~~

4-62 (g-1) The presiding officer of the governing body must be
 4-63 one of the members described by Subsection (g)(7).

4-64 (h) The ERCOT independent system operator may meet the
 4-65 criteria relating to the other functions of an independent
 4-66 organization provided by Subsection (a) by adopting procedures and
 4-67 acquiring resources needed to carry out those functions, consistent
 4-68 with any rules or orders of the commission.

4-69 SECTION 10. Subchapter D, Chapter 39, Utilities Code, is

5-1 amended by adding Sections 39.1511, 39.1512, and 39.1515 to read as
5-2 follows:

5-3 Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN
5-4 INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of
5-5 an independent organization certified under Section 39.151 and
5-6 meetings of a subcommittee that includes a member of the governing
5-7 body must be open to the public. The bylaws of the independent
5-8 organization and the rules of the commission may provide for the
5-9 governing body or subcommittee to enter into executive session
5-10 closed to the public to address sensitive matters such as
5-11 confidential personnel information, contracts, lawsuits,
5-12 competitively sensitive information, or other information related
5-13 to the security of the regional electrical network.

5-14 (b) The bylaws of the independent organization and rules of
5-15 the commission must ensure that a person interested in the
5-16 activities of the independent organization has an opportunity to
5-17 obtain at least seven days' advance notice of meetings and the
5-18 planned agendas of the meetings and an opportunity to comment on
5-19 matters under discussion at the meetings. The bylaws and
5-20 commission rules governing meetings of the governing body may
5-21 provide for a shorter period of advance notice and for meetings by
5-22 teleconference technology for governing body meetings to take
5-23 action on urgent matters. The bylaws and rules must require actions
5-24 taken on short notice or at teleconference meetings to be ratified
5-25 at the governing body's next regular meeting. The notice
5-26 requirements may be met by a timely electronic posting on the
5-27 Internet.

5-28 Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE
5-29 INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN
5-30 DECISION. (a) If a matter comes before the governing body of an
5-31 independent organization certified under Section 39.151 and a
5-32 member has a direct interest in that matter or is employed by or has
5-33 a substantial financial interest in a person who has a direct
5-34 interest in that matter, that member shall publicly disclose the
5-35 fact of that interest to the governing body at a public meeting of
5-36 the body. The member shall recuse himself or herself from the
5-37 governing body's deliberations and actions on the matter and may
5-38 not vote on the matter or otherwise participate in a governing body
5-39 decision on the matter.

5-40 (b) A disclosure made under Subsection (a) shall be entered
5-41 in the minutes of the meeting at which the disclosure is made.

5-42 (c) The fact that a member is recused from a vote or decision
5-43 by application of this section does not affect the existence of a
5-44 quorum.

5-45 Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An
5-46 independent organization certified under Section 39.151 shall
5-47 contract with an entity selected by the commission to act as the
5-48 commission's wholesale electric market monitor to detect and
5-49 prevent market manipulation strategies and recommend measures to
5-50 enhance the efficiency of the wholesale market.

5-51 (b) The independent organization shall provide to the
5-52 personnel of the market monitor:

5-53 (1) full access to the organization's main operations
5-54 center and the organization's records that concern operations,
5-55 settlement, and reliability; and

5-56 (2) other support and cooperation the commission
5-57 determines is necessary for the market monitor to perform the
5-58 market monitor's functions.

5-59 (c) The independent organization shall use money from the
5-60 rate authorized by Section 39.151(e) to pay for the market
5-61 monitor's activities.

5-62 (d) The commission is responsible for ensuring that the
5-63 market monitor has the resources, expertise, and authority
5-64 necessary to monitor the wholesale electric market effectively and
5-65 shall adopt rules and perform oversight of the market monitor as
5-66 necessary. The market monitor shall operate under the supervision
5-67 and oversight of the commission. The commission shall retain all
5-68 enforcement authority conferred under this title, and this section
5-69 may not be construed to confer enforcement authority on the market

6-1 monitor or to authorize the commission to delegate the commission's
6-2 enforcement authority to the market monitor. The commission by
6-3 rule shall define:

6-4 (1) the market monitor's monitoring responsibilities,
6-5 including reporting obligations and limitations;

6-6 (2) the standards for funding the market monitor,
6-7 including staffing requirements;

6-8 (3) qualifications for personnel of the market
6-9 monitor; and

6-10 (4) ethical standards for the market monitor and the
6-11 personnel of the market monitor.

6-12 (e) In adopting rules governing the standards for funding
6-13 the market monitor, the commission shall consult with a
6-14 subcommittee of the independent organization's governing body to
6-15 receive information on how money is or should be spent for
6-16 monitoring functions. Rules governing ethical standards must
6-17 include provisions designed to ensure that the personnel of the
6-18 market monitor are professionally and financially independent from
6-19 market participants. The commission shall develop and implement
6-20 policies that clearly separate the policymaking responsibilities
6-21 of the commission and the monitoring, analysis, and reporting
6-22 responsibilities of the market monitor.

6-23 (f) The market monitor immediately shall report directly to
6-24 the commission any potential market manipulations and any
6-25 discovered or potential violations of commission rules or rules of
6-26 the independent organization.

6-27 (g) The personnel of the market monitor may communicate with
6-28 commission staff on any matter without restriction.

6-29 (h) The market monitor annually shall submit to the
6-30 commission and the independent organization a report that
6-31 identifies market design flaws and recommends methods to correct
6-32 the flaws. The commission and the independent organization shall
6-33 review the report and evaluate whether changes to rules of the
6-34 commission or the independent organization should be made.

6-35 SECTION 11. Chapter 39, Utilities Code, is amended by
6-36 adding Subchapters J and K to read as follows:

6-37 SUBCHAPTER J. STATUS OF COMPETITION IN CERTAIN NON-ERCOT AREAS

6-38 Sec. 39.451. APPLICABILITY. (a) This subchapter applies
6-39 to an investor-owned electric utility:

6-40 (1) that is operating solely outside of ERCOT in areas
6-41 of this state that were included in the Southwest Power Pool on
6-42 January 1, 2004;

6-43 (2) that was not affiliated with the Southeastern
6-44 Electric Reliability Council on January 1, 2004; and

6-45 (3) to which Subchapter I does not apply.

6-46 (b) The legislature finds that circumstances exist that
6-47 require that areas served by an electric utility described by
6-48 Subsection (a) not be transitioned to full retail customer choice
6-49 at this time.

6-50 Sec. 39.452. REGULATION OF UTILITY AND TRANSITION TO
6-51 COMPETITION. (a) Until the later of January 1, 2012, or the date
6-52 on which an electric utility subject to this subchapter is
6-53 authorized by the commission to implement customer choice, the
6-54 rates of the electric utility shall be regulated under traditional
6-55 cost of service regulation and the electric utility is subject to
6-56 all applicable regulatory authority prescribed by this subtitle and
6-57 Subtitle A, including Chapters 14, 32, 33, 36, and 37. Until the
6-58 date on which an electric utility subject to this subchapter
6-59 implements customer choice, the provisions of this chapter do not
6-60 apply to that electric utility, other than this subchapter,
6-61 Sections 39.904 and 39.905, and the provisions relating to the duty
6-62 to obtain a permit from the Texas Commission on Environmental
6-63 Quality for an electric generating facility and to reduce emissions
6-64 from an electric generating facility.

6-65 (b) On or after January 1, 2012, the commission may require
6-66 an electric utility subject to this subchapter to file a transition
6-67 to competition plan with the commission. The transition to
6-68 competition plan must identify how electric utilities subject to
6-69 this subchapter intend to achieve full customer choice, including

7-1 an evaluation of the transmission facilities, an explanation of how
 7-2 certification of the power region under Section 39.152 will be
 7-3 achieved, auctioning rights to generation capacity, or any other
 7-4 measure that is consistent with the public interest. The utility
 7-5 must also include in the transition to competition plan a provision
 7-6 to establish a price to beat for residential customers and
 7-7 commercial customers having a peak load of 1,000 kilowatts or less.
 7-8 The commission may prescribe additional information or provisions
 7-9 that must be included in the plan. The commission shall approve,
 7-10 modify, or reject a plan within 180 days after the date of a filing
 7-11 under this section unless a hearing is requested by any party to the
 7-12 proceeding. If a hearing is requested, the 180-day deadline will be
 7-13 extended one day for each day of the hearing. The transition to
 7-14 competition plan may be updated or amended, subject to commission
 7-15 approval, until the applicable power region is certified as a
 7-16 qualifying power region under Section 39.152 and the plan is
 7-17 approved.

7-18 (c) On implementation of customer choice, an electric
 7-19 utility subject to this subchapter is subject to the provisions of
 7-20 this subtitle and Subtitle A to the same extent as other electric
 7-21 utilities, including the provisions of Chapter 37 concerning
 7-22 certificates of convenience and necessity.

7-23 Sec. 39.453. CUSTOMER CHOICE AND RELEVANT MARKET AND
 7-24 RELATED MATTERS. The commission may not authorize customer choice
 7-25 until the later of January 1, 2012, or the date the applicable power
 7-26 region has been certified as a qualifying power region under
 7-27 Section 39.152.

7-28 SUBCHAPTER K. TRANSITION TO COMPETITION FOR CERTAIN 7-29 AREAS OUTSIDE OF ERCOT

7-30 Sec. 39.501. APPLICABILITY. (a) This subchapter applies
 7-31 to any multistate electric utility operating solely outside of
 7-32 ERCOT that is serving customers in areas of this state within the
 7-33 Western Electric Coordinating Council.

7-34 (b) The legislature finds that the power region in which an
 7-35 electric utility subject to this subchapter provides electric
 7-36 service is unable at this time to offer fair competition and
 7-37 reliable service to all retail customer classes in this state. As a
 7-38 result, the introduction of retail competition for the portions of
 7-39 that power region in this state is delayed until fair competition
 7-40 and reliable service are available to all retail customer classes.

7-41 Sec. 39.502. COST-OF-SERVICE REGULATION. (a) Until the
 7-42 date on which an electric utility subject to this subchapter is
 7-43 authorized by the commission to implement retail customer choice,
 7-44 the rates of the utility are subject to regulation under Chapter 36.

7-45 (b) Until the date on which an electric utility subject to
 7-46 this subchapter implements customer choice, the provisions of this
 7-47 chapter, other than this subchapter and Sections 39.904 and 39.905,
 7-48 do not apply to that utility.

7-49 (c) In accordance with Section 39.904, an electric utility
 7-50 subject to this subchapter shall obtain, at a minimum, renewable
 7-51 energy credits in an amount sufficient to meet the requirements for
 7-52 the compliance period beginning January 1, 2006, and for each
 7-53 compliance period after that date.

7-54 (d) In accordance with Section 39.905, an electric utility
 7-55 subject to this subchapter shall begin administering energy
 7-56 efficiency programs on January 1, 2006. The utility shall meet, at
 7-57 a minimum, five percent of its growth in demand through energy
 7-58 efficiency savings resulting from those programs by January 1,
 7-59 2007, and 10 percent of its growth in demand by January 1, 2008, and
 7-60 each year after that date.

7-61 Sec. 39.503. TRANSITION TO COMPETITION. (a) The sequence
 7-62 of events prescribed by Subsections (b)-(f) shall be followed to
 7-63 introduce retail competition in the service area of an electric
 7-64 utility subject to this subchapter. All listed items in a
 7-65 subsection must be completed before the events provided by the next
 7-66 subsection are initiated. Full retail competition may not begin in
 7-67 the service area of the utility until all actions prescribed by
 7-68 those subsections are completed.

7-69 (b) The first stage for the transition to competition

8-1 consists of the following activities:

8-2 (1) approval of a regional transmission organization
 8-3 by the Federal Energy Regulatory Commission for the power region
 8-4 that includes the electric utility's service area and commencement
 8-5 of independent operation of the transmission network under the
 8-6 approved regional transmission organization;

8-7 (2) development of retail market protocols to
 8-8 facilitate retail competition; and

8-9 (3) completion of an expedited proceeding to develop
 8-10 non-bypassable delivery rates for the customer choice pilot project
 8-11 to be implemented under Subsection (c)(1).

8-12 (c) The second stage for the transition to competition
 8-13 consists of the following activities:

8-14 (1) initiation of the customer choice pilot project in
 8-15 accordance with Section 39.104;

8-16 (2) development of a balancing energy market, a market
 8-17 for ancillary services, and a market-based congestion management
 8-18 system for the wholesale market in the power region in which the
 8-19 regional transmission organization operates; and

8-20 (3) implementation of a seams agreement with adjacent
 8-21 power regions to reduce barriers to entry and facilitate
 8-22 competition.

8-23 (d) The third stage for the transition to competition
 8-24 consists of the following activities:

8-25 (1) the electric utility filing with the commission:

8-26 (A) an application for business separation in
 8-27 accordance with Section 39.051;

8-28 (B) an application for unbundled transmission
 8-29 and distribution rates in accordance with Section 39.201;

8-30 (C) an application for certification of a
 8-31 qualified power region in accordance with Section 39.152; and

8-32 (D) an application for price-to-beat rates in
 8-33 accordance with Section 39.202;

8-34 (2) the commission:

8-35 (A) approving a business separation plan for the
 8-36 utility;

8-37 (B) setting unbundled transmission and
 8-38 distribution rates for the utility;

8-39 (C) certifying a qualified power region, which
 8-40 includes conducting a formal evaluation of wholesale market power
 8-41 in the region, in accordance with Section 39.152;

8-42 (D) setting price-to-beat rates for the utility;

8-43 and

8-44 (E) determining which competitive energy
 8-45 services must be separated from regulated utility activities in
 8-46 accordance with Section 39.051; and

8-47 (3) completion of the testing of retail and wholesale
 8-48 systems, including those systems necessary for switching customers
 8-49 to the retail electric provider of their choice and for settlement
 8-50 of wholesale market transactions, by the regional transmission
 8-51 organization, the statewide registration agent, and market
 8-52 participants.

8-53 (e) The fourth stage for the transition to competition
 8-54 consists of the following activities:

8-55 (1) commission evaluation of the results of the pilot
 8-56 project;

8-57 (2) initiation by the electric utility of a capacity
 8-58 auction in accordance with Section 39.153 at a time to be determined
 8-59 by the commission; and

8-60 (3) separation by the utility of competitive energy
 8-61 services from its regulated utility activities, in accordance with
 8-62 the commission order approving the separation of competitive energy
 8-63 services.

8-64 (f) The fifth stage for the transition to competition
 8-65 consists of the following activities:

8-66 (1) evaluation by the commission of whether the power
 8-67 region that includes the electric utility can offer fair
 8-68 competition and reliable service to all retail customer classes,
 8-69 and:

9-1 (A) if the commission concludes that the power
 9-2 region can offer fair competition and reliable service to all
 9-3 retail customer classes, the commission issuing an order initiating
 9-4 retail competition for the utility; and

9-5 (B) if the commission determines that the power
 9-6 region cannot offer fair competition and reliable service to all
 9-7 retail customer classes, the commission issuing an order further
 9-8 delaying retail competition for the utility; and

9-9 (2) on the issuance of an order from the commission
 9-10 initiating retail competition for the utility, completion by the
 9-11 utility of the business separation and unbundling in accordance
 9-12 with the commission order approving the unbundling.

9-13 SECTION 12. Subsection (e), Section 39.903, Utilities Code,
 9-14 as amended by Chapters 1394, 1451, and 1466, Acts of the 77th
 9-15 Legislature, Regular Session, 2001, is reenacted and amended to
 9-16 read as follows:

9-17 (e) Money in the system benefit fund may be appropriated to
 9-18 provide funding solely for the following regulatory purposes, ~~and~~
 9-19 in the following order of priority:

9-20 (1) programs to:

9-21 (A) assist low-income electric customers by
 9-22 providing the 10 percent reduced rate prescribed by Subsection (h);
 9-23 and

9-24 (B) provide one-time bill payment assistance to
 9-25 electric customers who are or who have in their households one or
 9-26 more seriously ill or disabled low-income persons and who have been
 9-27 threatened with disconnection for nonpayment;

9-28 (2) customer education programs, administrative
 9-29 expenses incurred by the commission in implementing and
 9-30 administering this chapter, and expenses incurred by the office
 9-31 under this chapter;

9-32 (3) programs to assist low-income electric customers
 9-33 by providing the targeted energy efficiency programs described by
 9-34 Subsection (f)(2);

9-35 (4) the school funding loss mechanism provided by
 9-36 Section 39.901;

9-37 (5) programs to assist low-income electric customers
 9-38 by providing the 20 percent reduced rate prescribed by Subsection
 9-39 (h); and

9-40 (6) reimbursement to the commission and the Health and
 9-41 Human Services Commission [~~Texas Department of Human Services~~]
 9-42 for expenses incurred in the implementation and administration of an
 9-43 integrated eligibility process created under Section 17.007 for
 9-44 customer service discounts relating to retail electric service,
 9-45 including outreach expenses the commission determines are
 9-46 reasonable and necessary.

9-47 SECTION 13. Section 39.903, Utilities Code, is amended by
 9-48 adding Subsection (j-1) to read as follows:

9-49 (j-1) The commission shall adopt rules governing the bill
 9-50 payment assistance program provided under Subsection (e)(1)(B).
 9-51 The rules must provide that a customer is eligible to receive the
 9-52 assistance only if the assistance is necessary to prevent the
 9-53 disconnection of service for nonpayment of bills and the electric
 9-54 customer is or has in the customer's household one or more seriously
 9-55 ill or disabled low-income persons whose health or safety may be
 9-56 injured by the disconnection. The commission may prescribe the
 9-57 documentation necessary to demonstrate eligibility for the
 9-58 assistance and may establish additional eligibility criteria. The
 9-59 Health and Human Services Commission, on request of the commission,
 9-60 shall assist in the adoption and implementation of these rules.

9-61 SECTION 14. (a) The Public Utility Commission of Texas
 9-62 shall conduct a comprehensive review of the reporting requirements
 9-63 relating to telecommunications providers that are prescribed by
 9-64 statute or commission rules.

9-65 (b) In conducting the review, the Public Utility Commission
 9-66 of Texas shall:

9-67 (1) solicit input and assistance from appropriate
 9-68 affected persons, as that term is defined by Section 11.003,
 9-69 Utilities Code; and

10-1 (2) consider:
 10-2 (A) the manner in which information included in a
 10-3 report is used;
 10-4 (B) whether information included in a report is
 10-5 duplicative of information included in a different report; and
 10-6 (C) whether the requirements relating to a report
 10-7 the commission determines is necessary can be changed to make the
 10-8 reporting process more efficient.

10-9 (c) The Public Utility Commission of Texas shall conclude
 10-10 the review required by this section not later than September 30,
 10-11 2006, and shall report to the legislature on the results of the
 10-12 review. The report must include:

10-13 (1) specific recommendations on which reports the
 10-14 commission determines are necessary and which are not necessary;

10-15 (2) for a report the commission determines is
 10-16 necessary, whether the requirements relating to the report can be
 10-17 changed to make the reporting process more efficient; and

10-18 (3) the actions the commission has taken or will take
 10-19 to amend commission rules to reflect the results of the review.

10-20 (d) If the Public Utility Commission of Texas determines
 10-21 that legislation is necessary or appropriate to eliminate or change
 10-22 reporting requirements prescribed by statute, the commission shall
 10-23 include those recommendations in the biennial report to the
 10-24 legislature required by Section 52.006, Utilities Code.

10-25 SECTION 15. Section 52.254, Utilities Code, is repealed.

10-26 SECTION 16. The change in law made by this Act relating to
 10-27 qualifications and eligibility to serve as a commissioner or to be
 10-28 employed with the Public Utility Commission of Texas applies only
 10-29 to a commissioner or employee appointed or employed after the
 10-30 effective date of this Act. A commissioner or employee of the
 10-31 Public Utility Commission of Texas who is serving or employed on the
 10-32 effective date of this Act is governed by the law as it existed
 10-33 immediately before the effective date of this Act, and the former
 10-34 law is continued in effect for that purpose.

10-35 SECTION 17. The change in law made by this Act to Section
 10-36 15.023, Utilities Code, applies only to a violation committed on or
 10-37 after the effective date of this Act. A violation committed before
 10-38 the effective date of this Act is governed by the law in effect when
 10-39 the violation was committed, and the former law is continued in
 10-40 effect for that purpose.

10-41 SECTION 18. An independent organization certified by the
 10-42 Public Utility Commission of Texas before September 1, 2005, shall
 10-43 modify the organization's governing body to comply with Subsection
 10-44 (g), Section 39.151, Utilities Code, as amended by this Act, not
 10-45 later than September 1, 2006. On or after September 1, 2006, the
 10-46 Public Utility Commission of Texas may decertify an independent
 10-47 organization whose governing body does not comply with Subsection
 10-48 (g), Section 39.151, Utilities Code, as amended by this Act.

10-49 SECTION 19. This Act takes effect September 1, 2005.

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